

2021-06-09_Cherveny Eric_Plts' Counter-counter Obj Resps to ABDC_11-9-2018 Depo1

WITNESS NAME: Cherveny, Eric																	
DEPOSITION DATE: 11/9/2018																	
AFFIRMATIVE DEPOSITION DESIGNATIONS																	
INTER DESIGNATIONS * <i>Pink</i> = Completeness Designation																	
REPLY DESIGNATIONS * <i>Pink</i> = Completeness Designation																	
Page/Line Begin	Page/Line End	Objections	Objection Notes	Replies to Objections	Responses to Replies to Objections	Page/Line Begin	Page/Line End	Objections	Replies to Objections	Page/Line Begin	Page/Line End	Objections	Replies to Objections				
254	22	255	7	lack of foundation; assumes facts not in evidence; misleading	misstates/inco rrectly assumes information about Mr. Mays' meeting with DEA	Lack of foundation, assuming facts and misleading are not applicable. The witness worked with Defendant for more than 20 years (including responsibilities as Supervisor of Regulatory Compliance for the East Region from 2002-2015, and Director of the Diversion Control program from 2015-present) and had the knowledge, experience and job duties sufficient to answer the questioning. See Attachment A. Also, relative to the 2005 meeting between S. Mays (ABDC) and the DEA, the foundation for this is already in evidence through the trial testimony of S. Mays. See e.g. , 5/17/2021 Trial Tr. at 179:9-187:7, 181:3-4; 5/18/2021 Trial Tr. at 192:10-193:18. In fact, the entire binder given by the DEA to ABDC/S. Mays during the 2005 meeting (with guidance materials on ABDC's roles/responsibilities, and how their due diligence program should be improved) was admitted into evidence. See P-8813. The trial testimony and this admitted exhibit shows how during the 2005 meeting the DEA relayed its concern about suspicious orders and internet pharmacies and wanted ABDC to take additional due diligence efforts.	Mr. Mays clearly testified that the 2005 meeting with DEA related specifically to internet pharmacies. See 5/18/2021 Trial Tr. at 193:1-5 (Steve Mays testifying that the 2005 meeting "was exclusively about internet pharmacy [sic] and the problem that they were having with internet pharmacies"). Further, P-8813 was not admitted for the truth of the matter asserted; it was admitted for the limited purpose of notice and state of mind.										
255	10	255	11	lack of foundation; lack of personal knowledge		Same as above. Relative to the lack of personal knowledge objection, the point of the questioning and testimony is to establish that the information was not shared with the witness (who should have received same as Supervisor of Regulatory Compliance), and the witness not knowing as well as not recalling the information being relayed during any of the regulatory meetings he attended, are consequential and confirm Plaintiff's point.											
261	13	261	21	lack of foundation; lack of personal knowledge		The lack of foundation and lack of personal knowledge objections are inapplicable. The witness worked with Defendant for more than 20 years (including responsibilities as Supervisor of Regulatory Compliance for the East Region from 2002-2015, and Director of the Diversion Control program from 2015-present) and had the knowledge, experience and job duties sufficient to answer the questioning. See Attachment A. In fact, this questioning/testimony involves a 12/11/2013 email from the witness and the attachment to the witness's email (a 2000 Memorandum of Understanding ("MOU") between Amerisource and the DEA regarding problems with the Amerisource Columbus distribution center, including failures to provide effective controls and procedures to prevent diversion). See Dep. Exh. 1 at pp. 1-2. Moreover, the witness did not dispute sending this email or having discussions about the MOU he attached (see Dep. at 262:5-13). To the extent the witness did not recall specifics surrounding same, that is not lack of personal knowledge. It is still evidence about notice and/or knowledge, how seriously (or un-seriously) the witness took the DEA guidance, and the witness's work competence and/or testimony credibility.	Mr. Cherveny clearly testified he had no recollection of this document (a document from 21 years ago) either specifically <i>or</i> generally, the circumstances surrounding it, or his conversation with Mr. Gundy about it (to the extent any conversation even occurred). See Dep. at 252:2-4; 262:15-17; 264:2-10; 267:19-268:1. Counsel did not establish at the deposition that Mr. Cherveny had any personal involvement with this matter. Mr. Cherveny merely forwarded the document 13 years later in 2013 to a colleague with no commentary. Further, Mr. Cherveny clearly testified that he worked for Bergen Brunswick, which did not merge with AmerisourceHealth until 2001. The attachment that counsel asks about is dated 2000--before the merger--and addresses Amerisource Corporation (not Bergen Brunswick).										
262	18	264	10	lack of foundation; lack of personal knowledge		Same as above.	Same as above										
266	24	268	7	lack of foundation; lack of personal knowledge		Same as above.	Same as above										
273	9	274	22			n/a											
276	3	276	6			n/a											
276	12	276	22			n/a											
277	9	279	4			n/a											
279	21	280	1			n/a											
281	9	282	19			n/a											
299	20	300	8	calls for a legal conclusion		The question does not call for a legal conclusion, but rather the witness's notice, knowledge and/or understanding of the applicable regulatory requirement to report suspicious orders. Knowledge and/or notice of regulatory obligations (which govern the witness's work) are not legal conclusions. Moreover, this knowledge was within the witness's job responsibility (as Supervisor of Regulatory Compliance for the East Region from 2002-2015, and Director of the Diversion Control program from 2015-present). See Attachment A. Even if considered a legal conclusion, the testimony is admissible under FRE 704.											
300	16	301	3	asked and answered; calls for a legal conclusion; lack of foundation		Same as above relative to the objection to alleged legal conclusion. The objections of asked and answerd and lack of foundation are objections to form which were not made during the deposition relative to nearly all of the questions in this designation, and are thus waived relative to same. Also, the questions asked were all in a diferent manner than otherwise asked. In fact, this distinction in questioning was required to ensure that the correct terminoligy was being used/understood, and such need was even articulated by the questioner. See Dep. at 300:9-15. As for an alleged lack of foundation, the witness worked with Defendant for more than 20 years (including responsibilities as Supervisor of Regulatory Compliance for the East Region from 2002-2015, and Director of the Diversion Control program from 2015-present) and had the knowledge, experience and job duties sufficient to answer the questioning. See Attachment A. Moreover, there is evidence in the record that ABDC recognized these regulatory requirements. See e.g. , 5/12/2021 Trial Tr. at 163:9-17.											
301	6	301	6	calls for a legal conclusion; lack of foundation		Same as above.											
301	8	301	11	calls for a legal conclusion; lack of foundation		Same as above.											

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320	17	321	3	lack of foundation	The witness worked with Defendant for more than 20 years (including responsibilities as Supervisor of Regulatory Compliance for the East Region from 2002-2015, and Director of the Diversion Control program from 2015-present) and had the knowledge, experience and job duties sufficient to answer the questioning. See Attachment A. In fact, the witness previously testified that he specifically remembered the topic at issue ("that in 2007 the Orlando distribution center had their DEA license suspended"), and that one of his responsibilities at the time was conducting audits. See Dep. at 114:1-22, 115:14-23.										
321	7	321	14		n/a										
342	10	342	11	lack of foundation; vague	The witness worked with Defendant for more than 20 years (including responsibilities as Supervisor of Regulatory Compliance for the East Region from 2002-2015, and Director of the Diversion Control program from 2015-present) and had the knowledge, experience and job duties sufficient to answer the questioning. See Attachment A. Additionally, the witness's testimony and other evidence establishes that he was knowledgeable and familiar with MOUs. See e.g., Dep. at 262:18-263:5, 342:24-343:8; Dep. Exh. 1. The question was not vague, the witness had no difficulty with the question, and even confirmed the answer to be "from a regulatory standpoint". See Dep. at 342:17-19. The witness was even given a full opportunity to (and in fact did) explain his answer and show that he understood. See Dep. at 342:21-23. Further, to the extent there could be any vagueness, this Court can properly account for, consider and/or weigh same in this bench trial.										
342	17	342	19	lack of foundation; vague	Same as above.										
342	21	342	23	lack of foundation; vague; speculation; hearsay	Same as above relative to the lack of foundation and vagueness objections. Additionally, these objections and the objection of speculation are objections to form which were not made during the deposition, and are thus waived. Moreover, speculation and hearsay are not applicable as the question seeks (and the answer provides) the witness's knowledge and/or understanding of MOUs in general and why he thinks they are bad from a regulatory standpoint. Also, while Plaintiffs submit that there is no hearsay present (as the witness is simply stating what he believes MOUs are bad), even if the witness was referencing some specific statement from the DEA, hearsay is still not applicable because FRE 801(c)(2) is not satisfied (as it would not be proving the truth of a matter, but rather notice, knowledge, understanding, state of mind and/or acceptance that MOUs constitute negative findings), which is fully consistent with the witness's understanding. See Dep. at 342:24-343:8.										